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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,

USA SECURITIES, LLC,
Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR,
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR,
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**MOTION FOR APPROVAL OF
COMPROMISE SETTLEMENT OF
CLAIMS FILED BY HOMFELD II,
LLC AND EDWARD W. HOMFELD**

Hearing Date: March 17, 2011

Hearing Time: 2:00 p.m.

Estimated Time for Hearing: 10 minutes

The USACM Liquidating Trust (the "USACM Trust"), by and through its undersigned counsel, and Homfeld II, LLC, by and through Edward Homfeld, its managing member; and Edward W. Homfeld individually, (collectively "Homfeld") file this stipulated motion seeking to settle the Homfeld claims against the estate of USA Commercial Mortgage Company ("USACM") and directing approval and payment of the

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

1 unsecured non-priority claims.. This Motion is supported by the Declaration of Geoffrey
2 L. Berman filed herewith. The USACM Trust and Homfeld stipulate:

3 1. Homfeld II LLC by and through its Managing Member, Edward Homfeld
4 filed Proof of Claim No. 10725-01687 as an unsecured non-priority claim in the amount of
5 \$2,861,221.63. Portions of this claim have been disallowed by prior orders of this Court.

6 2. Edward W. Homfeld filed Proof of Claim 10725-01688 in the amount of
7 \$1,195,348.90 as an unsecured non-priority claim.

8 3. On August 17, 2010, the USACM Trust filed its Third Omnibus Objection to
9 Proofs of Claim Based in Part Upon Investment in the Huntsville Loan aka the West Hills
10 Park Loan [DE 8142] objecting to Claim 10725-01687 filed by Homfeld II, LLC (the
11 “Homfeld II” claim), which claim is based in part upon an investment in the Huntsville
12 loan. No order has been entered on the objection.

13 4. Homfeld filed a response to the objection [DE 8172]. Thus, to prevail on its
14 objection to the claim, the Trust would have to go to trial before this Court.

15 5. Pursuant to the ADR mechanism established under the Debtors’ confirmed
16 Plan, the Trustee, Geoffrey L. Berman and the Trust’s attorney John Hinderaker spoke to
17 Mr. Homfeld on several occasions (without the assistance of a mediator), to review the
18 Homfeld claims in detail and attempt to negotiate a settlement of the claims. In addition to
19 the documentation Mr. Homfeld included with the proofs of claim, Mr. Homfeld supplied
20 additional documentation to support the claims.⁴

21 6. The Trustee has considered the Homfeld proofs of claim, the documents
22 supplied by Mr. Homfeld to support the claims and the telephone dialog between the
23 parties. The Trustee believes that portions of the Homfeld claims are valid and that other
24 portions of the claims arguably have little merit. Therefore, the Trustee believes that a
25 substantial portion of the Homfeld claims would be allowed were the Trust to continue to
26

⁴ Declaration of Geoffrey L. Berman in Support of Stipulated Motion for Approval of Compromise Settlement of Claims and Directing Payment of Priority Claim Filed by: Homfeld II, LLC and Edward W. Homfeld (“Berman Decl.”) ¶ 4.

1 dispute the Homfeld claims and bring the dispute before the Court. Further, disputing the
2 remainder of the Homfeld claims would require the Trust to undertake fact intensive
3 litigation in relation to several different loans. The Trustee believes that the attorneys'
4 fees and expenses the Trust would incur to challenge the Homfeld claims in such litigation
5 would likely exceed the monetary value to the Trust beneficiaries ultimately derived from
6 challenging the Homfeld claims.⁵

7 7. The parties have agreed to settle the Homfeld claims and request that the
8 Court enter an order that:

- 9 • Proof of Claim No. 10725-01687 filed by Homfeld II, LLC in the amount of
10 \$2,861,221.63 will be allowed as an unsecured non-priority claim in the
11 amount of \$2,191,765.92. \$225,987.39 of this claim has been previously
12 allowed. The balance of Claim 10725-01687 will be disallowed;
- 13 • Proof of Claim No. 10725-01688 filed by Edward W. Homfeld in the
14 amount of \$1,195,348.90 will be allowed as an unsecured non-priority claim
15 in the amount of \$896,511.68. The balance of Claim 10725-01688 will be
16 disallowed.
- 17 • Based upon the portion of Proof of Claim No. 10725-01687, which has not
18 been previously allowed as an unsecured non-priority claim (\$1,965,778.53)
19 the Trust will make an immediate 4.92% distribution (\$96,716.31) to
20 Homfeld as the *pro rata* share of the funds reserved by the Trust from the
21 initial creditor distribution by the Trust.
- 22 • Based upon the allowed portion of Proof of Claim No. 10725-01688
23 (\$896,511.68), the Trust will make an immediate 4.92% distribution
24 (\$44,108.38) to Homfeld as the pro-rata share of the funds reserved by the
25 Trust from the initial creditor distribution by the Trust.

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⁵ Berman Decl. ¶ 5.

- DATED: February 11, 2011.

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